

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-8276-2014 (O&M)

Date of Decision: 16.09.2022

Ram Naresh

..... Appellant

Versus

Sube Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Rajesh Arora, Advocate for the appellant.
Mr. Raja Sharma, Advocate for respondent No.1
Mr. V.Ramswaroop, Advocate for respondent No.2.

HARKESH MANUJA, J.

CM-22433-CII-2014

This is an application for condonation of delay of 25 days in filing the appeal.

For the reasons mentioned in the application as well as fair stand taken by learned counsel for the respondents, the same is allowed. Delay of 25 days in filing the appeal is condoned.

MAIN CASE:

The present appeal lays challenge to the award dated 23.04.2014 passed by the learned Motor Accident Claims Tribunal, Gurgaon (in brevity, 'the Tribunal'), whereby compensation of Rs.1,49,600/- was awarded to the appellant/claimant along with interest @ 7.5% per annum from the date of claim petition till its realization. It was also directed that 50% of the amount of compensation shall be deposited for three years in Fixed Deposit account of any nationalized bank.

The brief facts of this case are that on 23.04.2012, claimant/appellant was going from Gurgaon to Delhi on his cycle; whereas his

brother Surendra Singh was going with him on his own cycle. At about 12.00 noon when they reached near Shyam Chowk, Service Road, N.H.No.8, Udyog Vihar, Phase V, Gurgaon, a bus bearing registration No.DL-1PC-7999 (hereinafter referred to as ‘offending vehicle’) being driven by respondent No. 1 in a rash and negligent manner, came from back side and hit the claimant/ appellant. As a result thereof, he suffered multiple injuries on his right arm, forearm and elbow. Respondent No.2 happens to be the owner of the offending vehicle; whereas respondent No.3 its insurer.

After going through the claim petition and evaluating the evidence led by both the parties, the Tribunal arrived at a conclusion that the accident occurred due to the negligent and rash driving of respondent No.1. Learned Tribunal further held that though the claimant/ appellant made an averment that he was working as producer and supplier of noodles and was earning Rs.12000/- per month, but neither he could lead any documentary evidence to prove his avocation and income; nor he could examine any customer or neighbour in support of his claim, therefore, no compensation under the head of loss of future income was awarded. Thus, learned Tribunal awarded compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	<i>Medical Expenses</i>	82,600/-
2.	<i>Pain and sufferings and mental agony</i>	35,000/-
3.	<i>Disability to the extent of 32%</i>	32,000/-
	TOTAL:	1,49,600/-

With regard to the liabilities, learned Tribunal held that respondent No.1 (Driver of the offending vehicle), respondent No.2 (registered owner) and respondent No.3 (insurer) are jointly and severally liable to pay the compensation amount. Further respondent No.3- (Insurance Company) was held liable to pay the entire compensation to the claimant.

Being aggrieved against the award dated 23.04.2014, the present appeal has been filed by the claimant/ appellant for enhancement of the compensation.

Learned counsel for the claimant/appellant has contended that no compensation has been awarded under the head of “loss of future income”; though there was a specific averment from the side of claimant that he was working as a producer and supplier of noodles. He further contended that in catena of judgments it has been held that it is not possible for persons/ labourers involved in unorganized sectors, doing their own business, to prove their income by producing documents. He again contended that neither compensation has been awarded under the head of future prospects; nor the functional disability of the claimant/ appellant has been taken into consideration for this purpose. He again contended that the compensation awarded under other heads is also very meager.

On the other hand, learned counsel for the respondents has argued that in the absence of any documentary proof or any testimony regarding the income of the claimant, the compensation awarded by the learned Tribunal is just and fair.

I have heard learned counsel for the parties, perused the paper-book as well as gone through the records of the case. I find force in

the arguments raised by learned counsel for the claimant/ appellant. Learned Tribunal adopted a very narrow and conventional approach while rejecting the claim of the claimant/ appellant regarding his monthly income in the absence of any documentary evidence or testimony of any customer. As per the claim of the appellant, he was working in an unorganized sector and it has been held in catena of judgments that in such a scenario it is not possible for the claimant to prove his income leading cogent documentary evidence. Reliance in this regard can be placed on the judgment of Hon'ble Supreme Court in **Syed Sadiq and others Vs. Divisional Manager, United Insurance Company Limited**, (2014) 4 SCC 735, wherein in para 8, it has been observed as under:-

“8. The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income.....”

Therefore, in my considered opinion, even if the appellant has not produced any documentary evidence to prove that he was working as a producer and supplier of noodles, he cannot be disbelieved in the absence of any cogent reason or without finding any inconsistency in his statement. Anyways, he was fulfilling his basic daily needs and therefore, it can be safely assumed that he must be deriving an income of an unskilled labour

and the minimum wages at that relevant point of time were Rs.4847/- per month, therefore, his income should be taken as Rs.5000/- per month.

Learned Tribunal has rightly considered the permanent disability of the claimant to the extent of 32% on the basis of disability certificate Ex.P1 on account of restriction of movements of right elbow by 80% which was proved by the testimony of Dr.Pankaj Aggarwal, SMO, General Hospital, Gurgaon (PW1). It is settled law that in such cases the effect of permanent disability on the earning capacity of the injured has to be assessed by the Tribunal. In this regard, reliance can be placed on the judgment of Hon'ble Supreme Court in **Sandeep Khanduja Vs. Atul Dande**, (2017) 3 SCC 351 and relevant para of the same is extracted hereunder:-

“11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.” The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In

this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of the MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by the MACT is that the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and

bodily abled. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier.....”

From the perusal of the above, it is apparent that while calculating the functional disability, the effect of disability on the earning capability has to be considered. In the case at hand, as movement in the right elbow of the claimant/appellant has been restricted by 80%, it cannot be expected that he will be able to perform the task involved in his profession from his right hand. Though from the left hand, claimant/appellant could still manage some work, however, not with the same proficiency and infact his efficiency would be far less, therefore, in my opinion the functional disability would be more than 32% and can be assumed to be 40% in the facts of the present case towards his loss of future earning capacity.

The learned Tribunal has also committed an error while not taking into consideration the future prospects. In **Pappu Deo Yadav Vs. Naresh Kumar and others**, 2020 (4) RCR (Civil) 404, Hon’ble Apex Court after relying upon **National Insurance Company Ltd. Vs. Pranay Sethi and others**, 2017(4) RCR (Civil) 1009, held as under:-

“12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle)”

In view of the observations made in **Pappu Deo Yadav’s** case (supra), the claimant/ appellant should have been awarded loss of future prospects @ 40% as he was only 35 years of age at the time of accident.

Learned Tribunal has also not awarded any compensation on account of other heads like special diet, attendant and conveyance charges, Loss of amenities and enjoyment of life and Loss of income during treatment.

In view of the discussions made hereinabove, the appellant is entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	Nature	Amount in Rupees
1.	<i>Annual Income of deceased (Rs.5000x 12)</i>	<i>Rs.60,000/-</i>
2.	<i>Add 40% of Future prospects</i>	<i>Rs.24,000/-</i>
3.	<i>Total Income (Rs.60,000/- + Rs.24,000/-)</i>	<i>Rs.84,000/-</i>
4.	<i>Multiplier of 16 as per age of 35 years (Rs.84,000/- X 16)</i>	<i>Rs.13,44,000/-</i>
5.	<i>Loss of future earning capacity/ income [40% (percentage disability) of total income]</i>	<i>Rs.5,37,600/-</i>
6.	<i>Medical Expenses</i>	<i>Rs.82,600/-</i>
7.	<i>Pain and sufferings and mental agony</i>	<i>Rs.35,000/-</i>
8.	<i>Disability to the extent of 32%</i>	<i>Rs.32,000/-</i>
9.	<i>Compensation for special diet, attendant and conveyance charges</i>	<i>Rs.20,000/-</i>
10.	<i>Loss of amenities and enjoyment of life</i>	<i>Rs.15,000/-</i>
11.	<i>Loss of income during treatment</i>	<i>Rs.10,000/-</i>
	Total Compensation	<i>Rs.7,32,200/-</i>
	Amount Awarded by the Tribunal	<i>Rs.1,49,600/-</i>
	Enhanced Amount	<i>Rs.5,82,600/-</i>

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon’ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513, which were approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimant from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

Consequently, the present appeal is disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

September 16, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>